

D.R. NO. 2001-14

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BOROUGH OF WENONAH,

Public Employer,

-and-

AFSCME COUNCIL 71,

Docket No. RD-2001-5

Employee Representative,

-and-

ROBERT MILLIGAN,

Petitioner.

**SYNOPSIS**

The Director of Representation dismisses a Petition for Decertification filed on March 27, 2001, finding that the petition is untimely. The current majority representative has a negotiations agreement covering the four-year period January 1, 1999 through December 31, 2002. That agreement is treated as a three-year agreement pursuant to N.J.A.C. 19:11-2.8(c)(d). Therefore, the period for filing a timely petition is not more than 120 days nor less than 90 days prior to December 31, 2001.

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Appearances:

For the Public Employer  
Dawn Marie Human, RMC

For the Employee Representative  
Susan H. Owen, Staff Representative

For the Petitioner  
Robert Milligan, pro se

**DECISION**

On March 27, 2001, Robert Mulligan (Petitioner), a unit employee in the Department of Public Works (DPW) of the Borough of Wenonah (Borough) filed a Petition for Decertification of a Public Employee Representative with the Public Employment Relations Commission (Commission). The petition is supported by a sufficient showing of interest.<sup>1/</sup> The Petitioner seeks to have

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<sup>1/</sup> N.J.A.C. 19:11-1.3(a)9.

the American Federation of State, County, and Municipal Employees (AFSCME) decertified as the employee representative of the Borough's public works employees.

The Borough does not object to a secret ballot election among the unit employees to determine their representational desires. AFSCME, however, has intervened in this matter on the basis of its current collective negotiations agreement with the Borough,<sup>2/</sup> and asserts that its contract should bar the filing of this petition.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2 and 2.6. There is no dispute in this matter that AFSCME has a collective agreement covering the Borough's public works employees for the period January 1, 1999 through December 31, 2002. The Petitioner acknowledged the current agreement on the face of the petition, including the December 31, 2002 expiration date.

N.J.A.C. 19:11-2.8(c) provides in pertinent part:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

In a case involving employees of a county or a municipality, any agency of a county or municipality or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days

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<sup>2/</sup> N.J.A.C. 19:11-2.7.

before the expiration or renewal date of such agreement.

Additionally, N.J.A.C. 19:11-2.8(d) provides in pertinent part that:

For the purpose of determining a timely filing, an agreement for a term in excess of three years will be treated as a three-year agreement.

Here, the agreement between AFSCME and the Borough covers the public works employees for the four-year period January 1, 1999 through December 31, 2002. Applying N.J.A.C. 19:11-2.8(c) and 19:11-2.8(d), for purposes of a timely filing, we would treat this agreement as having a term of three years -- that is, as if the contract were expiring December 31, 2001. The period in which a timely petition for decertification could be filed would begin no more than 120 days and no less than 90 days prior to December 31, 2001. Therefore, the filing of the instant petition is premature.


By correspondence dated April 25, 2001, we explained timeliness requirements for filing of petitions and informed the Petitioner that AFSCME objected to the petition as untimely. The Petitioner was given the opportunity to withdraw the petition. No withdrawal has been received.

Thus, I find that the decertification petition filed herein is untimely filed under N.J.A.C. 19:11-2.8(c) and must be dismissed.

ORDER

The petition is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman, Director

DATED: May 23, 2001  
Trenton, New Jersey